

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 1 of 20

11-1099	Briefs	CONSTITUTIONAL LAW: Does the citizens-only provision of the Virginia FOIA violate the privileges and immunities clause or the dormant commerce clause.
Mark McBurney v. Nathaniel Young (Smith)		

10-1222	Briefs	TITLE VII: Whether district court erred when it determined it lacked derivative jurisdiction over Bullock's Title VII claims after Defendant removed Bullock's state court action to federal district court.
Willie Bullock v. Janet Napolitano (Howard)		

09-4659	Briefs	CRIMINAL: Whether the evidence was sufficient, denial of new trial motion based on witness' post-trial recantations, denial of Brady/Giglio materials, sentencing issues
US v. Douglas Stallworth (Jones)		

Associations:	09-4796	
---------------	---------	--

PANEL I
Red Courtroom (Room 412)
9:30 a.m.

Tuesday, October 25, 2011

REVD 10/21/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 2 of 20

10-1874	Briefs	FOREIGN SOVEREIGN IMMUNITY ACT: Whether district court lacked subject matter jurisdiction; whether Iraq is immune from suit under the FSIA.
Wye Oak Technology, Inc. v. Republic of Iraq (Trenga)		

10-1906	Briefs	ADMIRALTY LAW: Whether court erred applying the doctrine of constructive total loss and finding United States established market value; related issues.
F.C. Wheat Maritime Corporatio v. US (Jackson)		

PANEL II
Butzner En Banc Courtroom (Room 201)
9:30 a.m.

Tuesday, October 25, 2011

REVD 10/20/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 3 of 20

10-1835	Briefs	INSURANCE: Whether summary judgment was properly entered in favor of St. Paul Fire & Marine Ins. Co. on Houston Casualty's action seeking equitable contribution/indemnification.
<hr/>		
10-4400	Briefs	CRIMINAL LAW: Waiver of right to appeal; computation of criminal history score.
<hr/>		
10-1597	Briefs	FEDERAL TORT CLAIMS ACT: Whether Maryland statute governing timeliness of medical malpractice actions is a statute of limitations or a statute of repose.
<hr/>		
10-2289	Briefs	STATUTORY CONSTRUCTION: Issues relating to statutory construction of North Carolina Wine Distribution Agreements Act.

PANEL III
Tan Courtroom (Room 223)
9:30 a.m.

Tuesday, October 25, 2011

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 4 of 20

11-1020	Briefs	BLACK LUNG: Whether retroactive application of Black Lung Benefit Act amendments is unconstitutional; whether amendments are severable; other issues.
<hr/>		
10-7579	Briefs	POST-CONVICTION RELIEF: Whether defendant received constitutionally ineffective assistance of counsel at sentencing.
<hr/>		
10-1540	Briefs	CIVIL: Whether district court erred in declining jurisdiction over declaratory judgment action challenging constitutionality of South Carolina Freedom of Information Act.
<hr/>		

PANEL IV
Tweed Courtroom (Room 414-D)
9:30 a.m.

Tuesday, October 25, 2011

REVD 10/21/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

10-4711	Briefs	CRIMINAL: Whether district court improperly questioned witness; admissibility of Fedex Airbill; sufficiency of evidence; whether speedy trial act was violated; whether venue was proper; determination of amount of loss for sentencing.
<hr/>		
10-1811	Briefs	FIRST AMENDMENT: Whether the appeal is moot; whether the district court abused its discretion in denying appellants' motion for a temporary restraining order; related issues.
<hr/>		
10-4736	Briefs	INTERNATIONAL LAW: Whether prosecution violated the specialty doctrine applicable to extradition cases.
<hr/>		
10-4704	Briefs	CRIMINAL LAW: Numerous issues regarding propriety of joinder, venue, admission and sufficiency of evidence.

PANEL V
Gold Courtroom (Room 348)
9:30 a.m.

Tuesday, October 25, 2011

REVD 10/20/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 6 of 20

09-1481	Briefs	CIVIL: Propriety of default judgment and amount of judgment, imposition of Rule 11 sanctions, civil contempt finding, denial of motion to transfer venue.
<hr/>		
10-2222	Briefs	CIVIL/CORPORATE: Whether a shareholder suit alleging misrepresentations by corporate officers falls within the compass of derivative suits; choice of law.
<hr/>		
10-1726	Briefs	IMMIGRATION: Whether substantial evidence supports the agency's adverse credibility determination.
<hr/>		
11-6480	Briefs	CIVIL RIGHTS: Whether Bivens remedy is precluded; whether officials are entitled to qualified immunity; whether plaintiffs have standing to contest "enemy combatant" designation; other issues.

PANEL I
Red Courtroom (Room 412)
9:30 a.m.

Wednesday, October 26, 2011

REVD 8/25/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 7 of 20

10-1497 Contract Materials Processing, v. Kataleuna (Davis)	Briefs	CONTRACTS: Whether the district court erred in bifurcating the trial; whether the district court erred in awarding KataLeuna equitable remedies; other issues.
10-2077 B Hancox v. Performance Anesthesia, P.A. (Britt)	Briefs	CIVIL: Whether Feres doctrine bars suit of active service member where Government substituted itself in place of private contractors.
10-2016 Peggy Russ v. Sid Causey (Flanagan)	Briefs	CIVIL RIGHTS: Whether police officers were entitled to immunity defense for tort claims.
10-6400 Timothy Hennis v. Frank Hemlick (Boyle)	Briefs	HABEAS CORPUS: Issues regarding jurisdiction of military court to conduct court martial and application of Councilman abstention doctrine.

PANEL II
Butzner En Banc Courtroom (Room 201)
9:30 a.m.

Wednesday, October 26, 2011

REVD 8/25/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 8 of 20

11-1060	Briefs	TELECOMMUNICATIONS: Whether county's denial of T-Mobile's wireless siting application effectively prohibits service or unreasonably discriminates against provider.
T-Mobile Northeast LLC v. Fairfax County (Lee)		
10-1771	Briefs	TITLE VII: Whether employer discriminated against employee on basis of religious beliefs; other issues.
Charles Miller v. HSBC Finance Corporation (Perry)		
10-1865	Briefs	Civil: Whether North Carolina may assert Medicaid lien against minor's malpractice recovery for funds unrelated to past medical expenses and take one-third of funds as Medicaid lien; impact of Ahlborn opinion.
E.M.A v. Lanier Cansler (Voorhees)		
10-2221	Briefs	TELECOMMUNICATIONS ACT: Challenge to district court's affirmance of North Carolina Utilities Commission's decision under the federal statute.
New Cingular Wireless PCS, LLC v. Edward (Britt)		
Associations: 10-2243		
PANEL III Tan Courtroom (Room 223) 9:30 a.m.		
Wednesday, October 26, 2011		

REVD 8/25/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 9 of 20

10-5071	Briefs	CRIMINAL: Whether 18 U.S.C. section 922(g)(8), barring firearm possession by a person subject to a domestic violence protective order, is constitutional.
US v. Ronald Chapman (Chambers)		

09-5074	Briefs	SECOND AMENDMENT: Whether 18 U.S.C. Section 922(g)(3) (2006), which prohibits the possession of a firearm by an unlawful user of a controlled substance, is constitutional.
US v. Benjamin Carter (Goodwin)		

07-4993	Briefs	CRIMINAL LAW: Whether there was reasonable suspicion to stop vehicle; whether defendant waived his Miranda rights.
US v. Deontrayvia Adams (Flanagan)		
Associations: 11-4035		

PANEL IV
Tweed Courtroom (Room 414-D)
9:30 a.m.

Wednesday, October 26, 2011

REVD 10/21/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 10 of 20

10-2024 [Briefs](#) CIVIL: Whether district court correctly granted defendant's summary judgment motion on Hart's ADEA claim; other issues.
Carol Hart v. Bon Secours Baltimore Health
(Motz)

10-2097 [Briefs](#) PROPERTY LAW: Whether real covenant in special warranty deed is enforceable; other issues.
BP Products NA v. Charles Stanley, Jr.
(Brinkema)

11-1001 [Briefs](#) SOCIAL SECURITY: Whether substantial evidence supports the Administrative Law Judge's decision to discredit the consultative
Karen Sue Hancock v. Michael Astrue, Comm
psychological examiner's diagnosis of mental retardation; other issues.
(Osteen)

10-5060 [Briefs](#) CRIMINAL: Whether district court erred in applying five-level enhancement for engaging in pattern of conduct; other issues.
US v. Alan Paul Strieper
(Davis)

PANEL V
Gold Courtroom (Room 348)
9:30 a.m.

Wednesday, October 26, 2011

REVD 10/20/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 11 of 20

09-2182	Briefs	INSURANCE LAW: When insured received "notice of claim"; whether insurer was entitled to deny coverage; other issues.
SNL Financial LC v. Philadelphia Indemnity Ins (Moon)		
<hr/>		
10-4503	Briefs	CRIMINAL: Sufficiency of Government's evidence of conspiracy to distribute and possess with intent to distribute heroin; whether the Government breached the plea agreement; other issues.
US v. Lonnie Smith (Stamp)		
Associations: 10-4504		
<hr/>		
10-4752	Briefs	CRIMINAL: Whether the district court erred in denying Aidoo "safety valve" relief based on its finding that Aidoo failed to satisfy the final requirement of the provision that he truthfully disclose all information he had to the Government.
US v. Frank Aidoo (Legg)		
<hr/>		
10-2244	Briefs	CIVIL: Whether district court erred in finding Miller did not have standing to bring claims arising from denial of timber harvesting permit; other issues.
Daniel Miller v. Montgomery County, Maryland (Williams)		

PANEL I
Red Courtroom (Room 412)
9:30 a.m.

Thursday, October 27, 2011

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 12 of 20

10-1915	Briefs	Civil: Whether lender's use of incorrect model form established a violation of the Truth in Lending Act.
Edward Watkins v. Sun Trust Mortgage Inc. (Spencer)		
<hr/>		
10-2134	Briefs	CIVIL: Whether arbitrator, rather than court, had authority to determine whether binding contract existed providing for arbitration; other issues.
Peabody Holding Company v. United Mine (Brinkema)		
<hr/>		
10-4406	Briefs	SENTENCING: Whether district court erred in determining Ro's base offense level under USSG 2K2.1(a)(4)(A); other issues.
US v. Meehwan Ro (Titus)		

PANEL II
Butzner En Banc Courtroom (Room 201)
9:30 a.m.

Thursday, October 27, 2011

REVD 10/20/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 13 of 20

08-4984 [Briefs](#) CRIMINAL LAW & PROCEDURE: Whether district court properly denied motions to suppress; Confrontation Clause issue; other
US v. Jude Eligwe issues.
(Messitte)
Associations: 08-4992, 08-4986, 10-4860, 10-4863, 10-4864

10-4264 [Briefs](#) CRIMINAL: Whether the district court erred in denying Montieth's motion to suppress evidence recovered in the search of his
US v. Kwan Montieth home and statements made by Montieth.
(Conrad)

10-2333 [Briefs](#) IMMIGRATION: Whether a Board order remanding for a grant of voluntary departure is a final order of removal over which this
Qingyun Li v. Eric Holder, Jr. court has jurisdiction to review.

PANEL III
Tan Courtroom (Room 223)
9:30 a.m.

Thursday, October 27, 2011

REVD 10/20/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 14 of 20

10-1484	Briefs	CONTRACT: Whether district court erred in determining there was no contract and promissory estoppel did not apply and in holding Orteck liable for conversion; other issues.
Orteck International, Inc v. Transpacific Tire & (Chasanow)		
Associations: 10-1489, 10-1912		

10-4644	Briefs	CRIMINAL: Whether the district court erred in calculating drug quantity attributable to appellants.
US v. Nancy Bell (Jones)		
Associations: 10-4651		

10-4418	Briefs	HEALTH CARE FRAUD: Sufficiency of evidence to convict physician of alleged overbilling; numerous issues.
US v. Ronald Poulin (Davis)		

10-2401	Briefs	IMMIGRATION: Whether substantial evidence supports the conclusion that petitioner did not establish persecution on account of his membership in a particular social group; other issues.
Denis Zelaya v. Eric Holder, Jr.		

PANEL IV
Tweed Courtroom (Room 414-D)
9:30 a.m.

Thursday, October 27, 2011

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 15 of 20

10-4119	Briefs	CRIMINAL: Whether denial of Franks v. Delaware, 438 U.S. 154 (1978), hearing was error; propriety of district court's denial of suppression motion; propriety of Guidelines calculation.
US v. Collin McKenzie-Gude (Messitte)		
10-1581	Briefs	CIVIL: Whether Appeals Council was required to explain its rejection of newly submitted evidence; whether an ALJ must consult a vocational expert in light of potential medically-related absenteeism; other issues.
Maurice Meyer, III v. Michael Astrue (Anderson)		
10-2124	Briefs	ERISA: Whether district court applied proper legal standards in reversing Plan's denial of disability benefits.
Statia Scott v. Eaton Corporation Long Term Di (Herlong)		
10-9504	Briefs	Under Seal
In the Matter of Thomas Liotti		

PANEL V
Gold Courtroom (Room 348)
9:30 a.m.

Thursday, October 27, 2011

REVD 10/20/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 16 of 20

11-6886 [Briefs](#) CIVIL COMMITMENT: Constitutionality of Adam Walsh Act as applied to respondent.
US v. Gerald Timms
(Boyle)
Associations: 11-6941

11-7102 [Briefs](#) CIVIL COMMITMENT: Constitutionality of Adam Walsh Act as applied to respondent.
US v. Clyde Hall
(Boyle)

10-4474 [Briefs](#) CRIMINAL LAW: Whether order to reimburse for the cost of court-appointed attorney upon release was proper; validity of
US v. George Moore Appellant's conviction in light of United States v. Chester, ___ F.3d ___ (4th Cir. Dec. 30, 2010).
(Reidinger)

PANEL I
Red Courtroom (Room 412)
8:30 a.m.

Friday, October 28, 2011

REVD 10/13/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 17 of 20

10-4462 US v. Paul Glover (Conrad)	Briefs	CRIMINAL: Whether district court erred in denying motion to suppress evidence based on finding that officers had reasonable suspicion to stop and frisk defendant at gas station.
10-5123 US v. Agustin Rivera-Santana (Payne)	Briefs	CRIMINAL: Whether departure and variance yielding a 240-month sentence for illegal reentry of an aggravated felon was reasonable where Guidelines range was 57 to 72 months.
10-5055 US v. Michal Zakrzewski (Whitney)	Briefs	CRIMINAL LAW: Whether the government breached proffer agreement and, if so, whether appeal waiver in plea agreement is valid; other issues.
10-2104 Donna Woods v. Stewart Title Guaranty (Blake)	Briefs	CIVIL: Whether plaintiffs were required to exhaust administrative remedies for class certification following Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 130 S. Ct. 1431 (2010); other issues.

PANEL II
Butzner En Banc Courtroom (Room 201)
8:30 a.m.

Friday, October 28, 2011

REVD 10/20/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 18 of 20

10-4689 [Briefs](#)
US v. John Wellman
(Johnston)

CRIMINAL: Whether search warrant was supported by probable cause; instructions; sentencing.

10-4461 [Briefs](#)
US v. Clifton Washington
(Dever)

CRIMINAL LAW: Whether the district court violated Crawford by admitting an informant's out-of-court testimony as background to the arrest where that testimony also tended to identify defendant as the perpetrator.

11-4090 [Briefs](#)
US v. Elianer Dimache
(Wooten)

CRIMINAL LAW: Whether the district court erred in finding that bank employees were physically restrained within meaning of U.S.S.G. section 2B3.1(b)(4)(B).

PANEL III
Tan Courtroom (Room 223)
8:30 a.m.

Friday, October 28, 2011

REVD 10/26/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 19 of 20

10-5032	Briefs	SUPERVISED RELEASE: Whether the district court possessed jurisdiction to hold a second supervised release revocation hearing after imposing a supervised release violation sentence on the same revocation petition.
US v. Christopher Winfield (Hudson)		

10-4732	Briefs	CRIMINAL: Denial of motions for continuance and new trial; evidentiary issues; prosecutorial misconduct; upward departure; amount of loss relating to mail fraud convictions.
US v. Michael Peninger (Duffy)		

08-5267	Briefs	CRIMINAL: Propriety of district court's denial of motion for acquittal on conviction for honest services fraud; other issues.
US v. Andre Hornsby (Messitte)		

10-4121	Briefs	CRIMINAL LAW: Whether the district court erred in denying Appellant's motion to suppress; other issues.
US v. Decardio Glisson (Anderson)		

Associations: 10-4122

PANEL IV
Tweed Courtroom (Room 414-D)
8:30 a.m.

Friday, October 28, 2011

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2011 - 10/28/2011 Session)

Page 20 of 20

10-1756	Briefs	CIVIL: Whether, in Title VII case, attorneys' fees may be awarded under the Equal Access to Justice Act; whether district court erred in denying attorneys' fees.
EEOC v. Great Steaks, Incorporated (Beaty)		

10-4241	Briefs	CRIMINAL: Sufficiency of evidence supporting convictions for transmitting threatening communications over the Internet; constructive amendment to indictment; vulnerable victim adjustment.
US v. William White (Turk)		
Associations: 10-4452, 10-4597		

08-4647	Briefs	CRIMINAL LAW: Issues related to suppression of evidence, right to cross-examination, effect of "temporary protected status" on § 922(g)(5)(A) count.
US v. Israel Ramos-Cruz		

10-4416	Briefs	CRIMINAL: Whether the district court erred in denying the motion to suppress.
US v. Reginald Davis (Reidinger)		

PANEL V
Gold Courtroom (Room 348)
8:30 a.m.

Friday, October 28, 2011

REVD 10/20/11